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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,802	05/11/2001	Jeffrey A. Ruschke	8266-0592	7034

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EXAMINER

LUBY, MATTHEW D

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/853,802

Applicant(s)

RUSCHKE ET AL.

Examiner

Matt Luby

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 8-43 is/are pending in the application.
- 4a) Of the above claim(s) 23-25, 27 and 28 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11, 30-33, 44 and 45 is/are allowed.
- 6) ☒ Claim(s) 8-10, 12-22, 26, 29 and 34-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/22/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. The limitation "the handle is configured to extend from the frame of the propulsion device above the patient restraint board" (claim 19) is vague and indefinite. The preamble of claim 16 only sets forth a propulsion system. No actual patient support or patient restraint board has been positively claimed. Therefore it is unclear how the handle of the frame of the propulsion device can extend to above something that has not been claimed.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 8-9, 12-15 and 34-43 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by German Patent 1,041,210, hereafter '210.

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6. All of Applicants' positively claimed limitations are clearly shown in the Figures of '210.

7. Claims 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Abstract 08-317953, hereafter '953.

8. '953 disclose a propulsion system "configured" to move a patient support having a patient restraint board, the propulsion system comprising: a propulsion device (Figures 24-28) "configured" to contact the floor to power movement of the patient support, a coupler "adapted" to couple the propulsion device to the patient support, the coupler being "adapted" to be coupled to the patient restraint board (Figure 28), wherein the coupler is "adapted" to couple to a base frame of the patient support (Figure 28) wherein the propulsion device includes a frame (Figures 26 & 28), a vertically extending handle (Figures 26 & 28), and the coupler includes a first member (72) "adapted" to be coupled to the patient restraint board and the vertically extending handle (Figures 26 & 28), wherein the vertically extending handle extends from the frame of the propulsion device to a height above the patient restraint board (Figure 26), and the coupler is "adapted" to couple to a top edge of the patient restraint board (Figure 28).

9. Claims 21, 22, 26 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Abstract 08-317953, hereafter '953.

10. '953 disclose a propulsion system "configured" to move a patient support having a bed frame and a mattress, the propulsion system comprising: a propulsion device (Figures 24-28) "configured" to contact the floor to power movement of the patient support, a coupler configured to move between a coupled position coupling the

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propulsion device to the bed frame and an uncoupled position permitting movement of the propulsion device away from the bed frame (Figures 25-28), a vertically extending handler coupled to the coupler (Figures 26 & 28) and configured to move the coupler between the coupled and uncoupled positions, wherein the handle includes a handle portion positioned at a sufficient height above the floor to facilitate grasping of the handle portion by user to move the propulsion system about a care facility (Figures 26 & 28), wherein the coupler is hook shaped (Figure 25) and further comprising a plurality of wheels (Figure 26) configured to permit a user pushing on the handle to roll the propulsion system from one patient support to another (Figures 26 & 28).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 8-9, 12-15 and 34-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over '210 in view of '953.

13. '210 disclose all of the claimed limitations (as stated in the 102(b) rejection above). However, assuming arguendo that '210 does not disclose an automatically powered/driven propulsion device (in accordance with the Response to Arguments remarks below), '953 disclose that a wheel of a propulsion system is motorized (25a & 25b are powered by 30a & 30b) in order to provide propulsion assistance to a human

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operator (an inherently recognizable benefit of motorized propulsion systems). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide that the wheel of '210 is motorized, as taught by '953, in order to provide propulsion assistance to a human operator.

14. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over '210 in view of '953.

15. '210 disclose that the propulsion system including a vertically extending handle (15), wherein the propulsion system includes a frame (1, 4, 3, 5) and a wheel (2) coupled to the frame, the vertically extending handle being coupled to the frame (Figure 2) and the second member (10) is coupled to the vertically extending handle (Figure 2). '210 do not specifically disclose that the wheel is motorized. '953 disclose that a wheel of a propulsion system is motorized (25a & 25b are powered by 30a & 30b) in order to provide propulsion assistance to a human operator (an inherently recognizable benefit of motorized propulsion systems). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide that the wheel of '210 is motorized, as taught by '953, in order to provide propulsion assistance to a human operator.

***Allowable Subject Matter***

16. Claims 11, 30-33, 44 and 45 are allowed. The prior art fails to disclose a propulsion system including a vertically extending handle that is coupled to the frame and wherein a second member is slidably coupled to the vertically extending handle along with the rest of the recited limitations of claim 11. The prior art does not disclose

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a method of coupling a propulsion system to a patient support including the step of providing relative movement between the coupler and the patient restraint board such that the coupler and the perimetrical portion of the patient restraint board are coupled.

### ***Response to Arguments***

17. Applicant's arguments filed 1/29/04 have been fully considered but they are not persuasive.

18. Applicants were correct (as stated on page 8) that claims 16-18 and 20 were not intended to be rejected under 35 U.S.C. 112, 2<sup>nd</sup> paragraph in the last Office Action.

19. Applicants argue on page 9 that the "Examiner in rejecting independent claims 8 and 34 did not consider the phrase 'adapted to contact the floor.'" The Examiner did consider this phrase to the limited extent, if any, that it affects patentability. The device in '210 meets the requirement that it have the ability to contact the floor (as any object, especially one with wheels, would have the ability to contact the floor). However, since Applicants have cancelled this language from claims 8 and 34, this is a moot argument.

20. Applicants next argue on page 9 that the limitation "a propulsion device to power movement of the patient support" in claims 8 and 34 is not met by '210. '210 does meet the positive limitation "a propulsion device" (in the broadest reasonable interpretation of the word "propulsion") since a user would be propelling the device, which would in turn, when coupled to a patient support, propel the patient support. However, assuming that Applicants feel that the phrase "to power" means "a fully automatically powered propulsion device", a new rejection has been made (which is still considered proper in

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making this action final since Applicants amended the claim by deleting "adapted to contact the floor to power movement..." showing that it is notoriously well known in the art of systems for moving patient supports that they be automatically driven/powered instead of manually.

21. Applicants next argue on page 10 that the limitations "a propulsion device...and a coupler configured... to be coupled to the perimetrical portion of the patient restraint board" in claim 16 is not met by '953. Since the phrase "a coupler configured...to be coupled to the perimetrical portion of the patient restraint board" means, in the broadest reasonable interpretation: a coupler with the ability to be coupled to the perimeter of the patient restraint board, '953 meets this limitation because the coupler of '953 has the ability to be coupled to the perimeter of a patient restraint board. This interpretation is further bolstered by the fact that Applicants chose, in the preamble of claim 16, to recited "a propulsion system" instead of an entire combination of a hospital bed including a propulsion device.

22. Applicants next argue on page 10 that the limitations "a propulsion device... a coupler...and a vertically extending handle coupled to the coupler and configured to move the coupler between the coupled and uncoupled positions" in claim 21 is not met by '953. The bed transporting device of Figures 24-28 unequivocally meets this limitation since a user steering the hospital bed, such as a hospital employee, would have to manually steer the device to the bed, preferably by the handle (since that is what a handle is for), to permit coupling of the device and the bed.



***Conclusion***

23. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

24. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matt Luby whose telephone number is (703) 305-0441. The examiner can normally be reached on Monday-Friday, 9:30 a.m. to 6:00 p.m..

26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

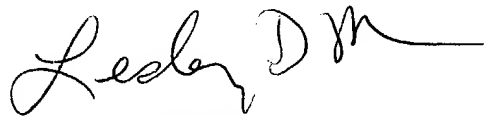
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27. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Matt Luby  
Examiner  
Art Unit 3611



M.L.  
April 5, 2004



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